



King County

Committee of the Whole

STAFF REPORT

Agenda Item:	3	Name:	Amy Tsai
Proposed No.:	2014-B0082	Date:	May 14, 2014
Invited:	David Chapman, Interim County Public Defender		

SUBJECT

A briefing on the state of County public defense.

SUMMARY

In November, 2013, voters approved an amendment to the King County Charter that created the King County Department of Public Defense, a County Public Defender position to manage the department, and a Public Defense Advisory Board.

This briefing summarizes the series of events leading to the creation of the department, provides an update on implementation of the new department, and identifies upcoming issues related to public defense. The interim County Public Defender, David Chapman, is also present to address the Committee.

BACKGROUND

Public defense services are mandated by the United States Constitution, the Washington State Constitution and state law. The Sixth Amendment of the United States Constitution and Article I, Section 22, of the Washington State Constitution guarantee assistance of counsel to every citizen accused of a matter where loss of liberty is possible.

Dolan Lawsuit Resulted in Restructuring of County Public Defense (Ordinance 17537)

For over 40 years, King County contracted with private, nonprofit corporations for the provision of most public defense services. Over time, the County built up a national reputation for excellence and innovation in the provision of public defense services. The four defender organizations that were most recently providing public defense services included the Associated Counsel for the Accused (ACA), the Northwest

Defender Association (NDA), Society of Counsel Representing Accused Persons (SCRAP) and The Defender Association (TDA).

In January 2006, a class action lawsuit was filed against King County, alleging that the employees of these agencies were county employees and that King County had a duty to enroll them in the Public Employees' Retirement System (PERS).

In 2011, the Washington State Supreme Court held that the nonprofits were “arms and agencies” of King County with the defender organization employees eligible for PERS enrollment. In March 2013, the Council, in Ordinance 17537, approved a settlement agreement between King County and the Plaintiffs which is not yet final, but which called for the county to recognize the employees who are working for the public defense contractors as of June 30, 2013 as King County employees with full benefits for their positions on July 1, 2013 (“the recognition date”).

Interim Ordinance 17588 and Supplemental Ordinance 17589

To meet the recognition date obligation and to provide a structure to administer the public defense program, the Council adopted Ordinance 17588 (the “interim ordinance”), creating a county Department of Public Defense until such time as the Council directed implementation of an alternative structure.

As part of that ordinance, the Council created a Public Defense Criminal Justice Reform Advisory Task Force to examine options for using outside entities to promote innovation in public defense. The Public Defense Criminal Justice Reform Advisory Task Force delivered its final advisory report and recommendations on August 30, 2013. The report is available from the Clerk (2013-RPT0129).

The Council also approved a supplemental appropriation request to fund the transition (Ordinance 17589).

On July 1, defender organization employees joined the King County Department of Public Defense as county employees. Employees from each of the four defender organizations (ACA, NDA, SCRAP and TDA) migrated into four divisions (the ACA division, NDA division, SCRAP division, and TDA division). In total, about 355 employees joined King County. Since then, the nonprofit entities have dissolved or are continuing to perform other bodies of work.

The interim ordinance identified issues needing to be resolved for a successful and complete transition. This briefing provides a status report on those issues in the Analysis section below.

Charter Amendment Ordinance 17614 and Implementing Ordinance 17678

At the same time that the Council was adopting an in-house public defense structure to accommodate the July 1 recognition date from the *Dolan* settlement agreement, the Council was engaged in extensive deliberations regarding the best structure for the future of public defense in King County in light of the *Dolan* ruling. At issue was how to

provide effective public defense and continue the historical excellence of the County's public defense system.

On July 1, 2013, the Council adopted Ordinance 17614. That ordinance placed on the November 2013 ballot a proposed King County Charter amendment to create a County Department of Public Defense headed by a County Public Defender and containing characteristics designed to promote independence of the office. Specifically, the charter amendment does the following (see Attachment 1 for charter language):

- Created a charter-based department of public defense, headed by a county public defender and staffed by career-service county employees, within the executive branch;
- Creates a public defense advisory board that is representative of a variety of groups that focus on issues related to public defense;
- Provides for appointment of the county public defender by the executive, subject to council confirmation, from among candidates recommended by the advisory board, and provides for possible removal of the public defender by the executive for cause, subject to appeal to the council;
- Provides for appointment of the advisory board members by the executive, subject to council confirmation, from among candidates recommended by the groups that they represent;
- Establishes duties of the department of public defense, including not only the provision of legal counsel and representation to indigent individuals but also the fostering and promotion of “system improvements, efficiencies, access to justice and equity in the criminal justice system” and other duties that may be prescribed by ordinance;
- Establishes duties of the public defense advisory board, including: recommending candidates to fill any vacancy in the office of county public defender; reviewing, advising, and reporting on the department of public defense; advising the executive and the council on matters of equity and social justice related to public defense; and such other duties as the council may prescribe by ordinance;
- Provides that nothing in Article 5 of the county charter (concerning the county personnel system) is intended to “limit the ability of the county to contract with any person, organization, or government for services that could be provided by the department of public defense”; and
- Provides that the county executive must consult with the county public defender on the plans and goals for collective bargaining with represented employees of the department, both before and periodically during the negotiation of their terms and conditions of employment.

On October 28, 2013, the Council adopted Ordinance 17678 (“implementing ordinance”) containing details of how to implement the charter amendment requirements in King County Code. Primarily, the ordinance supplemented the charter description of the duties of the department of public defense and the county public defender; further defined the required qualifications for serving as county public defender; detailed the membership, qualifications, and duties of the public defense advisory board; and detailed the process for appointment, confirmation, and removal of the county public defender and the members of the public defense advisory board. (See Attachment 2 for a more detailed summary of the implementing ordinance.)

Public Engagement

The Council engaged in extensive deliberations on the best model for public defense in King County. There were ten briefings in the Committee of the Whole in 2013, representing half of the meetings held that year. There were public hearings and a 60-day public comment period, in addition to individual stakeholder meetings with Councilmembers and Council staff.

ANALYSIS

This analysis provides an update on how the migration from the non-profit agencies has progressed and identifies upcoming public defense issues for the Department of Public Defense (DPD).

Implementation Update

When the interim ordinance was adopted, staff presented a list of items necessary to ensure continuity of effective County public defense service for clients. Categories included 1) resolution of existing case contracts, 2) office logistics including case management, 3) onboarding processes, and 4) the disposition of non-county bodies of work performed by the former non-profit defender agencies.

The interim steps were completed to a sufficient degree to have a successful transition on July 1. Highlights of elements with work to be done include the following:

- Existing case contracts at time of migration - Resolution of contractual prepayment (and repayment to the County) for open cases that were turned over to the County on July 1 was completed for most but not all non-profit entities. Discussions are continuing.
- Unified case management system – The integration of the non-profit case management systems into one unified system has experienced delays in order to provide DPD and KCIT an opportunity to work on data fields to ensure a smooth migration and deployment. Prior to July 1, 2013, DPD negotiated agreements with each of the then non-profit defender agencies to assign their case management systems to the County so that cases could continue under the old systems until a new unified system can be put into place. The unified integration has a possible completion date of the end of this year.

- Long-term space planning – All current leases have escape clauses or ability to sublease. Renegotiations also occurred for shorter leases to give Public Defense greater flexibility. Any long term consolidation of divisions will likely require new lease agreements.
- Non-county contracts for sexually violent predator and misdemeanor cases – On July 1, the County took over Seattle Municipal Court misdemeanor casework previously performed by the non-profit defender agencies to maintain uninterrupted service to Seattle. That contract will expire on June 30, 2014. A new contract will be transmitted to Council in the near future. For the original contract, there was Councilmember concern over the appropriateness of the terms for King County, particularly the salary terms. Issues from the last contract will require analysis with the new contract to determine the extent to which those concerns were addressed. Public Defense states that the new terms were negotiated with those concerns in mind. The State Office of Public Defense and DPD are negotiating a contract and expect continued Sexually Violent Predator work for DPD.
- Collective Bargaining – Labor negotiations with Public Defense staff are still in progress for 2013 through 2015.
- Division consolidation - The 2014 adopted budget for the Department of Public Defense included assumed savings of \$500,000 from a planned structural change from the current four divisions down to two divisions by July 1, 2014. That is now unlikely to happen by the end of the year. It remains to be seen how the department will address this timing change.

Upcoming Issues

In the upcoming months, there are several known issues that may have accompanying legislation and/or committee time:

- Public Defense Advisory Task Force Report – The interim ordinance created a task force to explore options for having an outside entity deliver some portion of County public defense services. The purpose was to utilize experts in the field to look for creative ways to preserve the innovative thinking and criminal justice reform efforts that fed the County's national reputation for excellence over the past 40 years. The task force report was transmitted August 30, 2013. It has not yet been briefed in a committee.
- Public Defense Advisory Board – After voter passage of the County Charter amendment, advertising for creation of the Public Defense Advisory Board commenced in early February, 2014. At the time of the writing of this staff report, the Executive was waiting on transmittal of the required number of recommended names by the entities named in the implementing ordinance. Executive appointment of Board members is expected to occur in the near future (this month). At that time, the Council may confirm or reject the appointments by motion in the Law, Justice, Health and Human Services Committee.

Once appointed, the Board will be required to generate two reports per year on the state of public defense, and the recruitment process for a County Public Defender will begin. The Board's role is to narrow the field to three names, or three additional names upon request of the Executive. Confirmation occurs in the Committee of the Whole. The earliest realistic date for confirmation would be in October. The Board also advises the Executive and Council on matters of equity and social justice related to public defense.

- Seattle Municipal Court contract for misdemeanor services – As discussed above, transmittal of a new ILA with Seattle for King County to continue providing misdemeanor services is expected in the near future.
- Number of Divisions – As discussed above, the adopted 2014 budget assumed a consolidation from four divisions to two by July 1, 2014. It is unknown at this time what steps the department may take to address the \$500,000 efficiency assumptions that were in the budget and whether there will be any supplemental requests.
- Dolan litigation/settlement – The Dolan litigation resulted in a settlement agreement which was approved and adopted in Ordinance 17537. It began to be implemented on July 1, bringing public defenders of the non-profit defender agencies in-house. The settlement agreement was signed by the judge but is on appeal. It could be a year or more before it works its way through the courts.

Equity and Social Justice

Section 350.20.60 of the County Charter (Duties of the Department of Public Defense) states: "The department of public defense shall also foster and promote system improvements, efficiencies, access to justice and equity in the criminal justice system."

During the 2013 migration to an in-house department, there were specific concerns raised about the potential loss of existing equity and social justice programs that were being run by the then non-profit defender agencies. The Raising Our Youth As Leaders (ROYAL) program was brought in-house as an interim measure. Since then, the Department of Public Defense has taken on the DCHS grant and plans to administer the program on a permanent basis. The ROYAL program director recently met with the director of South King County Human Services in order to extend ROYAL's reach into South King County. ROYAL is attempting to expand to serve youth and families in Kent, Auburn, and the Federal Way area to bring more support the community there.

Another major program discussed in 2013 was the Racial Disparity Project. That work continues with the Public Defender Association (formerly The Defender Association), with the Interim Deputy Director of DPD devoting 0.5 FTE of her time on PDA's behalf to the work. DPD continues to work on various other activities as well.

One of the goals of the restructuring of public defense was to preserve the innovation and excellence that characterized 40 years of public defense services in King County. Many stakeholders attribute part of this reputation to the notable equity and social

justice efforts by the non-profit defender agencies. It remains to be seen how the County Public Defender will implement the charge given by the County Charter. It also remains to be seen whether an outside entity could play a role in supporting this charge.

ATTACHMENTS

1. King County Public Defense Charter Provisions
2. Summary of Implementing Ordinance

Attachment 1: King County Public Defense Charter Provisions

350.20 Executive Departments.

The executive departments shall consist of the department of assessments, the department of judicial administration, the department of elections, the department of public defense and those agencies of the executive branch which are primarily engaged in the execution and enforcement of ordinances and statutes concerning the public peace, health and safety and which furnish or provide governmental services directly to or for the residents of the county. (Ord. 17614 § 1 (part), 2013; Initiative 25 § 1, 2008).

350.20.60 Duties of the Department of Public Defense.

The duties of the department of public defense shall include providing legal counsel and representation to indigent individuals in legal proceedings, including those in the superior and district courts for King County and in appeals from those courts, to the extent required under the sixth amendment to the United States Constitution or Article I, Section 22, of the Constitution of the State of Washington. The department of public defense shall also foster and promote system improvements, efficiencies, access to justice and equity in the criminal justice system. Additional duties may be prescribed by ordinance. Elected officials shall not interfere with the exercise of these duties by the department; however, the enactment of appropriation ordinances does not constitute interference. The department shall not have its duties, as established in this section, decreased by the county council or the county executive. (Ord. 17614 § 1 (part), 2013).

Section 350.20.61. Administration of the Department of Public Defense. The department of public defense shall be managed by the county public defender. The department shall utilize the services of the executive departments and administrative offices as administered by the county executive.

The county public defender shall be appointed by the county executive, subject to confirmation by the county council, to a term that ends at the same time as the term of the county prosecuting attorney, unless removed earlier by the executive for cause, including the grounds for vacancy for elective office under Section 680 of this charter and such other grounds as the council may prescribe by ordinance. The removal may be appealed by the defender to the council by a process to be prescribed by ordinance. The council's determination shall be final.

The county executive shall appoint the county public defender from candidates recommended by the public defense advisory board under a process prescribed by ordinance. Qualifications of the county public defender may be established by ordinance. The county executive may reappoint the county public defender to additional terms, subject to confirmation by the county council. Confirmation of the appointment or reappointment, or removal when appealed, shall require the affirmative votes of at least five members of the county council. (Ord. 17614 § 1 (part), 2013).

Section 350.20.65. Public Defense Advisory Board.

The public defense advisory board is established to review, advise and report on the department of public defense in a manner that may be prescribed by ordinance. The board shall also advise the executive and council on matters of equity and social justice related to public defense. In the event of a vacancy in the office of county public defender, the board shall recommend candidates from whom the county executive shall make an appointment to fill the vacancy subject to confirmation by the county council.

The county council shall prescribe by ordinance the board's membership, process and qualifications for appointment to the board, rules and procedures, and may prescribe by ordinance additional duties of the board. (Ord. 17614 § 1 (part), 2013).

ARTICLE 5 - THE PERSONNEL SYSTEM

Section 555 Department of Public Defense.

Nothing in this Article 5 shall limit the ability of the county to contract with any person, organization, or government for services that could be provided by the department of public defense. (Ord. 17614 § 1 (part), 2013).

ARTICLE 8 - GENERAL PROVISIONS

Section 899. Department of Public Defense Employee Collective Bargaining.

The county executive shall consult with the county public defender on the plans and goals for bargaining before and periodically during the negotiation of terms and conditions of employment with employees of the department of public defense. The council may prescribe the method of consultation by ordinance. (Ord. 17614 § 1 (part), 2013).

Attachment 2: Summary of Implementing Ordinance, Ordinance 17678

The key provisions of Ordinance 17678 are:

A. Department of Public Defense (DPD)

1. Duties:

- a. Managing and being fiscally accountable for providing public defense services
- b. Screening applicants for financial eligibility and securing reimbursement to the extent of their ability (or their families' ability) to pay;
- c. Establishing and maintaining an assigned counsel panel and assigning cases to panel members;
- d. Preparing an annual budget that evaluates and forecasts service delivery levels and DPD expenses; and
- e. "Fostering and promoting system improvements, efficiencies, access to justice and equity in the criminal justice system".

2. Permitted DPD activities:

- a. Providing services by contract to tribal governments and municipalities in King County;
- b. Services related to criminal justice reform projects such as Raising Our Youth As Leaders (ROYAL), including entering into agreements.

B. County Public Defender (CPD)

1. Qualifications:

- a. Attorney admitted to practice in any U.S. jurisdiction, in active status and good standing;
- b. Within two years after appointment, become a member of the Washington State bar in active status and good standing;
- c. At least seven years of experience as an attorney primarily practicing criminal defense, including both felonies and misdemeanors; and
- d. Supervisory and managerial experience.

2. Duties:

- a. Managing and being fiscally accountable for DPD;
- b. Ensuring that DPD employs the needed technical and public defense expertise;
- c. Representing the executive in all city, county, state, and federal forums where the defense perspective is required;
- d. Ensuring that the American Bar Association Ten Principles for a Public Defense Delivery System guide the management of the department and the development of department standards for legal defense representation, and filing with the clerk of the council by April 1 of each year a report on the results of the county public defender's efforts in that regard;
- e. Following the Washington State Standards for Indigent Defense Services;
- f. Developing and maintaining appropriate standards for staff qualifications and experience;
- g. Working collaboratively with the public defense advisory board (PDAB) and providing relevant, non-privileged information to the board upon its reasonable request;
- h. Fostering and promoting system improvements, efficiencies, access to justice, and equity in the criminal justice system; and
- i. Within seven days after appointment, the CPD must designate a DPD employee to serve as deputy and, in the event of a vacancy in the office of CPD, as interim CPD until a new CPD is appointed.

3. Appointment process

- a. Appointed by the Executive, subject to Council confirmation, from among candidates recommended by PDAB;
- b. Within seven days after the CPD position becomes vacant, the Executive must begin a national recruitment for candidates;
- c. The Executive must complete the recruitment and provide PDAB with the names and related information of all candidates who meet the charter and code qualifications;
- d. Within 60 days after receiving the candidate information from the Executive, PDAB must review the candidates and recommend three for the Executive's consideration; PDAB must not rank the candidates, but may summarize the particular strengths of each;

- e. Within 15 days after receiving the list of recommended candidates from PDAB, the Executive may request three additional “names” (i.e., candidate recommendations and relevant written materials about each candidate); PDAB must comply within 30 days;
- f. Within 30 days after receiving the list of names from PDAB, the Executive must make the appointment; if PDAB has not provided the requisite number of names, the Executive may either choose one of the recommended candidates or wait until PDAB has provided the requisite number and make the appointment within 30 days thereafter;
- g. Council confirmation requires the affirmative votes of five councilmembers; motions to confirm are referred to the Committee of the Whole;
- h. If the Council rejects the appointment, PDAB must within 30 days recommend one additional candidate to the Executive; if the Executive has not previously requested three additional names (e.g., after receiving the initial three names), the Executive may request four more names instead of just one; PDAB must provide the additional one or four names within 30 days;
- i. Within 30 days after receiving the additional name or names, the Executive must make the appointment (and may not appoint a candidate whom the Council has rejected); if PDAB has not provided the requisite number of names, the Executive may either choose one of the recommended candidates or wait until PDAB has provided the requisite number and make the appointment within 30 days thereafter;
- j. Upon written request from the Executive, the Council by motion may authorize the commencement of a new selection process, beginning with a new national recruitment; this provides a remedy if the original pool of candidates is considered unsatisfactory.

4. Term of office:

- a. Four years, ending at same time as the term of the county prosecuting attorney;
- b. The Executive may reappoint the CPD to additional terms, subject to Council confirmation.

5. Removal for cause:

- a. The Executive may remove the CPD only for cause, which includes but is not limited to:
 - i. The grounds for vacancy of elective office under Section 680 of the King County Charter;

- ii. Failure to meet the applicable legal requirements for serving as county public defender;
 - iii. Conviction of a crime;
 - iv. Misconduct under the Washington Rules of Professional Conduct; and
 - v. Failure to manage the department effectively.
- b. CPD may, within 10 days, appeal removal to the council, which may either affirm or reverse the removal within 30 days; inaction by the council results in affirmance of the removal.

6. Compensation: At the same rate as the prosecuting attorney.

C. Public Defense Advisory Board (PDAB)

1. Duties

- a. Review the activities and plans of DPD;
- b. Make recommendations to CPD;
- c. Advise the Executive and the Council on matters of equity and social justice related to public defense;
- d. Prepare reports as required and as PDAB deems appropriate;
- e. Recommend candidates to fill any vacancy in the office of CPD;
- f. Work collaboratively with the CPD (and may reasonably request relevant, non-privileged information); and
- g. Consult with the county prosecutor, courts, and DPD in performing all of PDAB's duties except recommending candidates for CPD.

2. Makeup of board: eleven members, representing:

- a. Washington Association of Criminal Defense Lawyers;
- b. Washington State Office of Public Defense;
- c. Washington Defender Association;
- d. King County Bar Association;
- e. A bar association identified as a minority bar association by the Washington State Bar Association; and
- f. Nonpartisan organizations active in King County that focus on:

- i. Mental health issues;
- ii. Substance abuse issues;
- iii. Military veterans;
- iv. Issues related to poverty;
- v. Juvenile justice issues; and
- vi. Immigration issues.

3. Terms of board members: staggered three-year terms;

4. Appointment process

- a. Council clerk notifies groups of vacancies;
- b. Represented groups have 60 days to recommend candidates to the Executive;
- c. Within 30 days after the close of the notice period, the Executive must make the appointment, which is subject to Council confirmation; if a represented group has not provided the requisite number of names, the Executive may either choose one of the recommended candidates or wait until PDAB has provided the requisite number and make the appointment within 30 days thereafter;
- d. Council motions to confirm are referred to the Law, Justice, Health, and Human Services Committee;
- e. If the Council rejects an appointment, the represented group has 30 days to recommend an additional candidate for the Executive to consider.

5. Qualifications

- a. Substantial experience and expertise that are relevant to the work of DPD;
- b. Ability and willingness to commit the time necessary to attend meetings and participate effectively;
- c. A majority “should have substantial experience in providing indigent defense representation”;
- d. “To the extent practicable, the board membership shall reflect the diversity of the county”; and

- e. “[M]ay not, while serving on the board, hold elective public office except precinct committee officer, be a candidate for elective public office except precinct committee officer, serve as a King County judicial officer, a King County prosecuting attorney or a King County public defender or be an employee of a King County court, the King County prosecuting attorney or the King County department of public defense”.

6. Meetings: at least once every two months.

7. Reports: at least two each calendar year: one on PDAB’s review of CPD’s proposed budget for public defense; and one on the state of county public defense. The latter “shall include an assessment of the progress of the county in promoting equity and social justice related to the criminal justice system and may include recommendations for advancing equity and social justice.”

8. Staffing: to be provide by the Council.